Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 28 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation	)	CC Docket No. 96-128
Provisions of the Telecommunications	)	
Act of 1996	)	

OPPOSITION OF SPRINT TO PETITIONS FOR RECONSIDERATION

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SUMMARY

Arguments from some PSPs that the per-call compensation rate should be substantially increased are wholly without merit. On the contrary, the overwhelming evidence of record shows that the local coin calling rate is not a relevant measure of costs for other types of calls and that the rate the Commission has prescribed is far in excess of costs.

Several other parties agree with Sprint that the first year recovery method unfairly discriminates against larger IXCs by relieving small IXCs and LECs of any responsibility to bear their fair share of the first year payment obligation.

There is also widespread agreement that the Commission's per call plan after the first year creates significant administrative problems for IXCs and a real potential for fraud. There are various possible solutions to these problems: (1) a caller-pays approach is a more cost-causative method of compensation and would eliminate the administrative burdens and fraud potential altogether; in addition, it may moderate the level of charges imposed by PSPs; (2) PSPs should submit payment claims -- including a list of ANIs and the rates charged for local calls from each ANI -- thirty days in before the beginning of a quarterly compensation period, in order to allow IXCs a fair opportunity to recover costs; (3) in the absence of a caller-pays system, the set use fee approach should be employed; (4) transmission of the proper info digits as part of ANI should be an explicit condition for

eligibility for compensation; and (5) facilities-based IXCs should not be responsible for paying PSPs on behalf of their resellers. In the latter regard, because contractual terms between IXCs and their customers may preclude a pass-through of the Commission-imposed charges, the Commission should make a finding that its action constitutes substantial cause for modifying existing contracts.

Although the Report and Order is confusing and contradictory as to whether LECs are eligible for compensation on April 16, 1997 or October 6, 1997, in any event the Commission should not short circuit the process of considering whether the LECs have properly adjusted their books of account and their carrier common line charges. Thus, the Commission should not deviate from the filing periods required in the Report and Order.

All current costs of payphone service must be removed form access charges, including removal of the payphone line costs from the carrier common line charge. In addition, the subscriber line charge paid by non-payphone providers must not include any costs associated with payphone lines.

RBOCs should not be allowed to brand 0+ interLATA calls using their names until they have received in-region interLATA authority pursuant to §271.

Finally, the Commission should make clear that LECs are not required to install and maintain payphone equipment on behalf of private payphone providers.

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OPPOSITION OF SPRINT TO PETITIONS FOR RECONSIDERATION

Sprint Corporation opposes certain of the other petitions for reconsideration filed in the above-captioned docket and urges the Commission to act in accordance with the views expressed below and in Sprint's Petition for Reconsideration.

I. THE AMOUNT OF PER-CALL COMPENSATION SHOULD NOT BE INCREASED -- ON THE CONTRARY, IT SHOULD BE DRASTICALLY REDUCED (¶¶67-76)

Not content with the $1 billion annual windfall granted to them by the Report and Order, some PSPs urge substantial increases in per-call compensation. The Wisconsin Pay Telephone Association argues (at 4-11) for either $.90 or $1.50 per call (presumably preferring the latter figure), based on what it asserts to be current commission payments on 0+ calls and foregone revenues from dial-around calls.[1] The

[1] See also, RBOC Payphone Coalition at 3-6 (seeking higher compensation on inmate phones), Inmate Calling Services Providers Coalition at 6-11 (seeking $.90 per call from inmate phones), and InVision Telecom at 7 (also seeking $.90 per call from inmate phones).

Commission already rejected -- and properly so -- the bases underlying this request.[2] Moreover, the overwhelming weight of the argument in the petitions for reconsideration is that the $.35 per call ordered by the Commission is far in excess of costs.[3] The only significant area of dispute among these parties is the appropriate measure of costs. AT&T (at 5-8) urges a long run incremental costing standard, while other parties, including Cable & Wireless (at 5-7) and Sprint (at 4-5) urge the Commission to adopt the marginal cost standard that it had employed in the NPRM in this proceeding. Since a LRIC methodology includes recovery of the capital costs of the payphone, it would result in an excessive payment to PSPs. This is because PSPs place phones in service with the expectation that they will be able to fully recover the costs of the phones from local coin revenues, revenues from handling 0+ traffic themselves, and/or commission payments from the 0+ presubscribed carriers. Under these circumstances, the only relevant costs for handling non-revenue-producing calls are the marginal costs of using the payphone.

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[2] The Commission rejected 0+ commissions as a basis for setting the per-call rate in ¶69 of the Report and Order. In addition, the Commission rejected foregone revenues from dial-around calls as the basis for compensation to PSPs in <u>Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation</u>, 7 FCC Rcd 3251, 3255 (1992).

[3] <u>See</u> Sprint at 2-10; AT&T at 5-11; Cable & Wireless at 5-10; LDDS WorldCom at 7-11; MCI at 2-3, 12-15; CompTel at 5-10; and Paging Network at 6-16.

The Commission's notion that, after local coin rates are deregulated,[4] such rates can be properly used as a basis for per-call competition is also thoroughly discredited. Not only do existing local coin rates have nothing to do with the costs of handling other calls (see petitions cited in n.3 above), but "market forces" cannot be depended on to ensure cost-based rates, particularly where the driving competitive force is the enrichment of the location owner through higher commission payments from PSPs.[5] The fact that some PSPs are seeking compensation of as much as $1.50 from this Commission provides a clue as to what might happen after the first two years of the Commission's plan.

In view of the foregoing, and the evidence of record showing that the revenue streams already available to PSPs substantially exceed their total costs of providing

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[4] Although Sprint did not seek reconsideration on the Commission's decision to preempt the states in the setting of local coin rates, it has previously opposed such action (see Sprint's Comments at 9-10). Not surprisingly, the Commission's preemption is vigorously opposed by a number of state commissions and other parties. See California PUC at 2-3, New York Department of Public Service ("NYDPS") at 4-6, Ohio PUC at 7-8, Oklahoma Corporation Commission ("OCC") at ¶4, Texas PUC at 2-3, the Joint Petition of the commissions of Maine, Vermont, Virginia, Alabama, District of Columbia, Maryland and Montana (hereinafter "Joint State Petition") at 3-8, People's Counsel for District of Columbia at 5-6, and Consumers Union at 2-4. The states of Indiana and New Mexico also join in the Joint State Petition.

[5] See California PUC at 4-5, NYDPS at 6-9, Ohio PUC at 5-6, OCC at ¶6, Joint State Petition at 10-14, Texas PUC at 4-5, DC People's Counsel at 7-9, AT&T at 11-12, MCI at 12, and CompTel at 8-10.

payphones,[6] the Commission should find that no showing has been made on this record that the PSPs need additional revenues in order or to be "fairly" compensated, and should either rescind its order or, if it feels compelled to prescribe a particular rate by Section 276 of the Act, set the rate at $0.

II. THE FIRST-YEAR RECOVERY METHOD IS ARBITRARY AND DISCRIMINATES AGAINST LARGER IXCS (¶¶124-125)

Many other parties share Sprint's view (at 9-10) that the Commission is discriminating against larger IXCs by relieving small IXCs and LECs of any responsibility to bear their fair share of the first-year payment obligation.[7] Relieving these carriers of their payment obligations inflates the amounts the larger IXCs must pay by 25% and subjects them to a competitive disadvantage. Thus, all carriers -- including small IXCs and LECs -- should be taxed during the first year of the Commission's per-call compensation program.

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[6] See Sprint at 2.

[7] See AT&T at 15-17, Cable & Wireless at 10-13, LDDS WorldCom at 4-7, and MCI at 22-23.

III. MAJOR CHANGES ARE NEEDED IN THE ADMINISTRATIVE DETAILS OF THE COMMISSION'S PLAN (¶¶70-71, 85-86, 98, 115)

Many parties share Sprint's concern (at 10-17) over the administrative problems and fraud potential presented by the Commission's per-call plan. These concerns are particularly heightened by allowing PSPs, after the second year, to receive per-call compensation at whatever rate they claim that they charge for a local coin call.[8] As discussed below, there are a variety of possible solutions to these problems.

A. The "Caller-Pays" Approach Deserves Serious Consideration

If the Commission decides to adhere to its "market-based" approach of letting each PSP decide the amount of compensation it receives, then serious consideration should be given to the "caller-pays" or "coin-in-a-box" approach, which would require the person placing the call to compensate the PSP directly.[9] It is, after all, the calling party who chooses to use a payphone and who imposes whatever costs may be associated with the use of that payphone on the PSPs. Absent a caller-pays system, and particularly if the PSPs are allowed to charge "market-based" rates for per-call compensation, the calling

[8] See AT&T at 14-15, Cable & Wireless at 8-10, CompTel at 10-12, and Paging Network at 21-23.

[9] That approach is supported by AT&T at 18-20, AirTouch Paging at 4-11, Paging Network at 5, PageMart at 2-3, PCIA at 5-7, and MCI (for 411 calls) at 7.

party may never realize the economic consequences of its use of the payphone. Instead, the per-call compensation costs may be borne by the called party in the case of collect calls or subscriber toll free calls. Even in cases where the calling party is also paying for the call (e.g., a calling card call), the costs of using the payphone may be reflected in higher usage rates for all calling card calls or, if passed through on a per-call basis, would not visible to the calling party until weeks later when the bill for the call is received. By requiring advance payment for use of the phone, caller-pays may initially inconvenience callers who have been accustomed to making coinless calls.[10] Nonetheless, the calling party would be aware of the costs incurred by placing the call and would be able to consider whether there are more economical alternatives to the use of payphones -- e.g., a PCS phone, or a cellular phone, or simply waiting to make the call from another location that might charge a lower up-front rate.

Furthermore, relying on caller-pays is more likely to moderate the level of charges imposed by PSPs. The PSPs in Wisconsin (see p.1 above) might not seek $1.50 per call if they knew that consumers would have to deposit that amount in advance. Requiring callers to pay up-front would also

[10] However, it may be possible for the payphone industry to develop a universally accepted "swipe" card that could be used at any payphone to pay the per-call charge assessed by the PSP.

eliminate the administrative costs and problems faced by IXCs, and would eliminate the potential for fraudulent dialing of toll free calls as a means of generating additional revenues for the PSP.

Section 226(e)(2) is not a bar to up-front payments by the calling party. While it may preclude the Commission from requiring PSPs to levy such a charge, it does not preclude PSPs from voluntarily doing so. Thus, for the reasons articulated in Point I, above, the Commission would be entirely justified in finding no need for Commission-prescribed compensation to PSPs. If, nonetheless, the Commission wished to allow PSPs to "charge what the market will bear" for the use of their phones, PSPs could do so by imposing an up-front charge on the calling party.

B. PSPs Should Submit Payment Claims In Advance

In the absence of a calling party pays system, the administrative burdens on IXCs of allowing rates to vary from one phone to the next are compounded by the Commission's determination (¶115) to allow a PSP to claim compensation up to one year after the compensation period in question. MCI points out (at 20-22) that this late submission of a claim for payment greatly complicates the processing tasks of IXCs and makes it virtually impossible to allow IXCs to recoup these amounts from their customers.

MCI appears to suggest (at 20) that three months after the end of the billing period would be a reasonable time to claim compensation. Sprint disagrees with MCI's approach. If rates are allowed to vary by phone, PSPs should be required to notify IXCs, at least 30 days before the beginning of a quarterly compensation period, that they are going to seek compensation for particular ANIs, and should notify the IXC at that time as to the rates that will be charged during that quarterly period from each payphone. Only by having this information well in advance will the IXCs be able to have a realistic chance of recouping the per-call charges from their customers and, should it prove technically and commercially viable, of considering whether to block calls from particular payphones.

In the latter regard, Sprint opposes APCC's argument (at 2-3) that IXCs that block calls from payphones should notify the PSP thirty days in advance and provide an announcement to the calling party that they have done so. By attempting to impose these burdensome requirements on IXCs, APCC is merely trying to strip away what little (if any) bargaining leverage IXCs might have in moderating the amounts charged by PSPs.

AirTouch Paging argues (at 15) that IXCs should not be allowed to block toll free numbers except with the consent of their toll free subscribers. Sprint believes there is no need for a Commission rule on this point. In the highly competitive market for toll free service, the Commission can expect that IXCs will make adequate disclosure to their customers of whether, and in what circumstances, they would block calls from payphones.

The Wisconsin Pay Telephone Association appears to argue that PSPs should be compensated on a monthly, rather than quarterly, basis, and that such compensation should be paid within thirty days (at 13-14). Sprint opposes these requests. More frequent payment intervals would just increase the administrative costs to the IXCs, costs which ultimately must be borne by the consumer. Moreover, given the complexity of the Commission's per-call plan, it may not be feasible for many IXCs to make payments within 30 days after the end of a compensation period. Although the Wisconsin Pay Telephone Association alludes to tardy payments by unnamed IXCs, Sprint is unaware that any PSP has filed a complaint with the Commission alleging unreasonable delays on the part of any IXC now paying dial-around compensation.

C. "Set Use Fee" Is The Next Best Alternative To "Caller-Pays"

If, on reconsideration, the Commission does not adopt a caller-pays system, then it should employ a "set use fee" approach to compensation, under which IXCs would bill the party paying for the call directly for the per-call charge and remit that amount, less administrative costs, to the PSPs on behalf of the paying parties. See Sprint at 14. AT&T, which had formerly favored the "carrier-pays" approach, now favors the set use fee as a fallback to caller-pays. See AT&T Petition at 19-20.

On the other hand, some paging industry parties urge the Commission to prohibit IXCs from passing through PSP compensation to toll free customers on a per-call basis.[11] Although these parties are understandably upset by the magnitude of the per-call charge ordered by the Commission, there is no basis for mandating those costs to be borne by all toll free service subscribers, regardless of whether or how many calls they receive from payphones. Although a set use fee approach may be less cost-causative than a caller pays approach, requiring toll free customers who receive no calls from payphones to cross-subsidize toll free customers who do is not cost-causative at all. Accordingly, even if the Commission does not mandate the set use fee approach, it should not preclude IXCs from passing these costs onto the party receiving the call on a per-call basis, if that is the result deemed optimal in the competitive interexchange marketplace.

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[11] See PCIA at 10, and Paging Network at 5, 16-21.

D. Transmission Of The Proper Info Digits Should Be An Explicit Condition Of Eligibility

AT&T (at 2-3) and MCI (at 7-10) share Sprint's view (at 18) that transmission in ANI of the info digits necessary to identify payphones should be an explicit condition of eligibility for compensation.

E. "Facilities-based" IXCs Should Not Be Responsible For Their "Resellers"

The final administrative issue relates to whether "facilities-based" IXCs should be obligated to pay compensation to PSPs on behalf of resellers. While CompTel (at 14) and Cable & Wireless (at 13-14) argue that the definitions of these terms should be clarified, AT&T (n.32 at 20-21) and MCI (at 16-18) agree with Sprint (at 15-17) that no IXC should be required to pay on behalf of another IXC. As they point out, the underlying IXC has no way of determining whether certain types of its resellers' calls are completed, and furthermore, it is unfair to burden some IXCs with the costs associated with acting as guarantors to PSPs of charges owed by other parties.

AT&T is also correct in pointing out (at 21) that the Commission makes an unwarranted assumption that IXCs can pass through their per-call compensation costs to their customers (whether they are resellers or end users). In fact, contractual terms between IXCs and their customers may preclude such a pass-through absent a Commission finding that its action in this docket constitutes substantial cause for modifying existing contracts. AT&T (id.) urges the Commission to make such a finding, and Sprint supports that request.

IV. LECS SHOULD NOT BE ALLOWED TO RECEIVE COMPENSATION BEFORE THE TIME SPECIFIED IN THE REPORT AND ORDER (¶¶60, 125)

The RBOCs argue that LECs should be entitled to receive the per-line interim compensation as soon as they transfer their payphone equipment to their non-regulated books and make the required adjustments in their carrier common line rates, and that they should be allowed to complete these tasks well before the April 15, 1997 date specified in the Report and Order.[12]

As a threshold matter, the ROBCs' arguments that, under the Report and Order as it now stands, they would be entitled to receive compensation as early as April 15, 1997, is contradicted by ¶60, which states:

> LECs will not be eligible to receive per-call compensation under §276(b)(1)(a) for one year, when all such subsidies are terminated.

Sprint acknowledges that the Report and Order lacks clarity and consistency on this point. Thus, ¶125 states that

[12] See Ameritech at 4-9, BellSouth at 4-5, and the RBOC Payphone Coalition at 1-3.

> PSPs that are affiliated with LECs will not be eligible for this interim compensation until the first day following their reclassification and transfer of payphone equipment along with the termination of subsidies, as discussed below [footnote omitted].

It may be that the phrase "PSPs that are affiliated with LECs" in ¶125 was intended to draw a distinction between LECs that place their payphone operations in a separate subsidiary -- i.e., an affiliate -- and LECs that instead choose to offer payphone service (as they are permitted to do) on an unseparated basis, allowing separate affiliates to begin receiving compensation beginning April 16, 1997, but requiring unseparated payphone operations to wait until October 6, 1997.

Whatever the Commission's intent may have been, there is no reason to allow LECs to foreclose thorough consideration of whether they have complied with all of the steps necessary to ensure that their payphone operations have been removed from regulated accounts and the regulated rate base as is required under §276 of the Act. The LECs have an incentive to transfer as little costs as possible to their non-regulated accounts, and to leave as much of their payphone revenue requirement as they can get away with in their access charges -- an issue addressed separately in the next section. Giving this Commission, as well as the states (which also must ensure that payphone subsidies are removed from state rates), too little time to review the LEC filings could negatively affect competitors, IXCs, and consumers for the indefinite future. In view of the generous nature of the Commission's per-call rate,[13] it is not surprising that the RBOCs would like to short circuit the filing periods required in the Report and Order. However, in order to ensure that all subsidies have been removed, and all necessary accounting adjustments have been made, the Commission should not deviate from the filing periods required in the Report and Order.[14]

V. ALL CURRENT COSTS OF PAYPHONE SERVICE MUST BE REMOVED FROM ACCESS CHARGES PAID BY OTHERS (¶183)

In Sprint's Petition for Reconsideration, it sought clarification (at 19) of the LECs' obligation to remove all payphone related costs from the carrier common line charge. The need for this clarification is underscored by arguments made by BellSouth and USTA. BellSouth contends (at 9) that the interstate costs of subscriber lines utilized by all

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[13] AT&T, in its October 16, 1996 ex parte letter, estimated that the RBOCs' net revenue increase -- after carrier common line adjustments -- from the Commission's per-call plan would amount to $500 million annually.

[14] BellSouth's suggestion (at 5-6) that in addition to receiving the per-line compensation during the first year, BOCs should also be eligible for per-call compensation for all 0+ calls would only add further to the RBOCs' windfall. The level of commissions now being paid by RBOCs to premises owners is undoubtedly lower than it would be when they begin to participate in the selection of the presubscribed OSP: at least some portion of the commission paid to the RBOC to the OSP will be paid over to the premises owner by the RBOC. Requiring OSPs to pay for 0+ traffic to the RBOCs while letting them retain the economic benefit of their current arrangements with premises owners would simply be an additional windfall to the RBOCs.

payphone providers (LECs and non-LECs alike) will be recovered "in part by interstate CCL charges assessed by the incumbent LEC to interexchange carriers (or other access customers) in connection with the interstate switched access services provided to them." Similarly, USTA seems to assume (at 2) that the subscriber line charge revenue requirement will pick up the payphone line costs.

There is clearly no warrant for BellSouth's assertion that the CCL charge should reflect <u>any</u> payphone transmission costs. Retention of any such costs in the CCL would clearly run afoul of the explicit provisions of §276(b)(1)(B). Even folding such costs into the general SLC revenue requirement, as USTA appears to contemplate, would violate that provision unless the LECs established a separate SLC, applicable only to payphone lines, that fully recovered the interstate and intrastate costs attributable to those lines. Any recovery of that revenue requirement in the SLC charged to other businesses and residential subscribers would violate the statute.

In addition, AT&T is correct in pointing out (at 24) that the required reduction in carrier common line charges should reflect the increased SLC revenues the LECs will be receiving from their own payphones. The logic of AT&T's position would also require the CCL reduction to reflect any additional SLC revenues from private payphones, if the SLC charged to such phones is increased.

VI. RBOCS SHOULD NOT BE ALLOWED TO BRAND 0+ CALLS BEFORE THEY RECEIVE INTERLATA AUTHORITY (¶244)

BellSouth (at 21-25) seeks clarification that in order to maintain parity of treatment with private payphone providers, RBOCs should be allowed to use their own brand on interLATA operator service calls placed from their payphones. BellSouth is clearly attempting to arrogate to itself the right to hold out to the public that it is engaged in interLATA service whether or not it has received approval to do so pursuant to §271 of the Act. The Commission properly rejected BellSouth's arguments in ¶244 of the Report and Order, and if any clarification is needed, it should simply be that BellSouth is not permitted to do what it seeks until it receives the necessary authorization under §271.

VII. THE COMMISSION CANNOT REQUIRE LECS TO PROVIDE MAINTENANCE AND INSTALLATION OF PAYPHONE EQUIPMENT (¶149)

Sprint's Petition (at 19-20) urged the Commission to clarify that ¶149 does not require LECs to install and maintain their competitors' payphone equipment. The New Jersey Payphone Association (at 14) also seeks clarification of ¶149, but argues that the required installation and maintenance services should apply to the payphones themselves, and not merely to payphone transmission lines. However, as explained in Sprint's petition, installation and maintenance of CPE is a non-communications service, and there is no jurisdictional basis on which the Commission could require such activities to be performed for one's competitors in this non-regulated sector.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the "Reply Comments of Sprint Corporation" have been sent via first-class mail, postage-prepaid, or hand delivered, on this 28th day of October, 1996.

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